

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRTIETH REGION

Houghton, Michigan

MANDERFIELD, INC.¹

Employer

**Cases 30-RC-6473
30-RC-6474**

and

**SHEET METAL WORKERS
INTERNATIONAL ASSOCIATION,
LOCAL NO. 7, AFL-CIO²**

Petitioner

and

**U.P. PLUMBERS AND PIPEFITTERS U.A.
LOCAL 506**

Petitioner

DECISION AND DIRECTION OF ELECTIONS³

This is my determination as to the appropriateness of the proposed bargaining units as petitioned for by the two Unions. The Sheet Metal Workers seek to represent a bargaining unit of employees performing sheet metal fabrication, installation and service on air handling systems. The Plumbers and Pipefitters seek to represent a unit of the plumbing and pipefitting employees. The Employer, however, contends that the two petitioned-for units are not sufficiently separate and distinct, and given the shared community of interest between both

¹ The name of the Employer appears as amended at hearing.

² The name of Petitioner Sheet Metal Workers appears as amended at hearing.

³ Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board. Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

groups of employees, a single unit of all employees is the only appropriate unit. I do not find the Employer's position persuasive. I therefore conclude that, as petitioned for by the Unions, the following two units are appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

30-RC-6473: All full-time and regular part-time sheet metal employees performing fabrication, installation, and service on air handling systems, employed by the Employer and working out of the Employer's facility in Atlantic Mine, Michigan; excluding plumbing and pipefitter employees, employees performing electrical service, insulation work, professional employees, confidential employees, guards and supervisors as defined in the Act.

30-RC-6474: All full-time and regular part-time plumbing and pipefitter employees employed by the Employer and working out of the Employer's facility in Atlantic Mine, Michigan; excluding sheet metal employees, office clerical employees, estimators, material expeditors, owners, managers, guards and supervisors as defined in the Act.⁴

ISSUES

- 1) The appropriateness of the two petitioned-for units.
- 2) Whether the *Daniel-Steiny*⁵ formula is appropriate in determining voter eligibility.

DISCUSSION

1) The appropriateness of the two petitioned-for units:

The issue in this case is whether or not the Unions' proposed units are appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act. The Board's procedure for determining an appropriate unit is to examine the petitioned-for unit and, if that unit is appropriate, end the inquiry into unit appropriateness. *Bartlett Collins Co.*, 334 NLRB No. 76 (2001). The unit needs only to be an appropriate unit, and need not be the most appropriate unit. *Morand Bros. Beverage Co.*, 91 NLRB 409, 419 (1950), enfd. on other grounds 190 F.2d 576 (7th Cir. 1951). In *Burns & Roe Services Corp.*, 313 NLRB 1307, 1308 (1994), the Board discussed its standard for finding a separate craft unit appropriate:

⁴ The Employer and both Petitioners filed post-hearing briefs that were duly considered. The hearing officer's rulings made at the hearing were free from prejudicial error and are affirmed. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case. The Petitioners, labor organizations within the meaning of Section 2(5) of the Act, claim to represent certain employees of the Employer. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

⁵ See *Daniel Construction Co.*, 133 NLRB 264 (1961), and *Steiny & Co.*, 308 NLRB 1323 (1992).

A craft unit is one consisting of a distinct and homogenous group of skilled journeymen craftsmen, who, together with helpers or apprentices, are primarily engaged in the performance of tasks which are not performed by other employees and which required the use of substantial craft skills and specialized tools and equipment. In determining whether a petitioned-for group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interests with other employees, including wages, benefits, and cross-training [Footnotes omitted].

Applying these factors to the units currently in question, I find that the units are indeed craft units.

The employees employed by the Employer have a sufficient number of the above factors to qualify as craft units. The testimony shows that employees include journeymen and apprentices that specialize in skills of either sheet metal work or plumbing. Though employees work together, there is little overlap in the work done, and work is assigned consistent with an employee's ability in a craft. Though the employees share similar terms and conditions of employment despite their separate crafts, the Board has held that those factors are not so significant as to outweigh the Employer's adherence to a system of apprenticeships and work assigned along craft lines, which makes craft units appropriate. See e.g., *Schaus Roofing and Mechanical Contractors, Inc.*, 323 NLRB 781 (1997).

The Employer contends that the two petitioned-for units are not appropriate and that only a unit covering all the employees at issue would be appropriate. The Employer bases its position primarily on two grounds: (1) that the two petitioned-for units do not represent separate and distinct groups of employees, and (2) that neither group shares a community of interest separate

and distinct from the whole of the two groups. I will address each of these arguments.

First, contrary to the Employer's assertion, the proposed units are separate and distinct groups divided by craft. The testimony establishes that employees have traditional craft classifications and include journeymen/installers, apprentices, and helpers, based on training and experience. The Employer adheres to a system of training employees in distinct trades, with new employees selecting to work in electrical work, plumbing, or sheet metal, and then receiving training in one of these crafts. For example, Terry Tarvainen, sheet metal foreman, completed a four-year sheet metal apprenticeship program through the Employer when he was an apprentice. The record shows that there are currently two plumbing apprentices whose apprenticeships are certified by the Department of Labor, and a sheet metal apprentice, who, though not certified, is in a sheet metal apprenticeship. The Employer itself identifies the employees by the craft they perform.

The Employer uses its Exhibit 2 as primary support for its position of significant overlap of employee work. Exhibit 2 is a report of projects done by the Employer, and the Employer also attached an Appendix to its brief purportedly summarizing the report and demonstrating the degree of overlap between the employees performing different crafts. However, testimony by the Employer's Owner, Matthias Manderfield, raises questions about the accuracy of Exhibit 2 (he testified that the document was not "100 percent accurate," and that "[t]here's no way of knowing" which employee did what on jobs that were marked as having both sheet metal and plumbing work), and the conclusions the Employer draws from the document were contradicted in testimony. Mike Helms and Christopher Cornish both testified that the report did not accurately characterize the work they did. Additionally, Terry Tarvainen, the sheet metal foreman, testified to doing more sheet metal work than the approximately 19% sheet metal work

indicated in the Employer's Appendix. Given the dubious reliability of this document (the vast majority of which was never explored or tested with any witness at the hearing), I rely instead on the ample testimony provided by witnesses at the hearing as to what type of work is done.

Employees at the hearing testified to working primarily in one craft. Steve Iverson, a master plumber and a witness for the Employer, testified that he did "mostly all plumbing," and spends about 3% of his time doing sheet metal work. Terry Tarvainen, the sheet metal foreman, testified that the four sheet metal employees in construction, as a whole, do sheet metal work "probably 98, 99 percent" of the time (Tarvainen himself being an exception). Mike Helms, a sheet metal fabricator, testified that he does 99 percent sheet metal work, does not do plumbing, and is currently laid off because he cannot do plumbing work. Christopher Cornish, who was a plumber, testified that he "almost never" did sheet metal work, and the work he did was more the nature of giving temporary assistance to sheet metal workers.

The employees work primarily in one craft, and the exceptions are not significant. Terry Tarvainen, the sheet metal foreman, testified to doing plumbing (but in the past did 98% sheet metal), and there is evidence of greater cross-over among employees in the service department. While there is more overlap for service employees than the employees in construction, the Employer itself still separately identifies each of the service employees based on a primary specialty or traditional craft (Bill Manderfield, the service manager, testified that service has three HVAC service employees, one electrician, and one plumber). Despite the exceptions, the majority of employees work within their craft. Though some employees perform unskilled work in other trades, the overlapping of duties in the lesser-skilled aspects of a trade does not preclude craft units. See *Burns & Roe*, supra.

Secondly, the Employer argues that there is not a separate or distinct community of

interest between the two groups. While it is true that all the employees share a general community of interest to some degree with each other (shared wages, benefits, and working conditions), they also have different interests based on the different crafts they practice. Diverging interests are inevitable as certain concerns of employees are tied directly to the specific work they do. For example, Mike Helms testified that he is currently laid off because he is a sheet metal worker, and because he does not do plumbing work. Layoffs in one trade but not the other are an example of how the sheet metal workers and plumbers share different interests. Based on differing interests like this, the shared interests that do exist among the employees of the two crafts are not so great as to make the two separate petitioned-for units inappropriate.⁶

2) Whether the *Daniel-Steiny* formula is appropriate in determining voter eligibility:

Eligibility to vote in the construction industry is determined by the *Daniel-Steiny* formula unless the parties stipulate not to use it. *Signet Testing Laboratories*, 330 NLRB 1 (1999). As the Employer is engaged primarily in construction, and the parties have not agreed to abandon the *Daniel Steiny* formula, it will be used to determine voter eligibility for these elections.

CONCLUSION

The Unions have petitioned for separate units consistent with the crafts and employees they traditionally represent. Although not dispositive, it is important to note that a petitioner's desire as to the unit is always a relevant consideration. *Marks Oxygen Co.*, 147 NLRB 228 (1964). While the Employer contends that one unit including all employees is the only

⁶ In a previous decision issued by this Region on March 26, 1991, it was determined a plumbing and pipefitter unit was appropriate. That unit included certain employees who performed sheet metal work and were treated as dual-function employees for eligibility purposes. No union sought to separately represent sheet metal workers. The decision in that case does not reflect a determination whether sheet metal employees constitute a separate and distinct unit. Given the substantial passage of time and different circumstances, particularly that the Sheet Metal Workers seek to separately represent certain employees, I find the earlier decision not dispositive.

appropriate unit, the employees perform distinct and separate crafts, and the community of interest shared by the employees is not so great as to render units defined by these crafts as inappropriate.⁷ The two petitioned-for units are therefore appropriate.

DIRECTION OF ELECTIONS

Elections by secret ballot shall be conducted by the Regional Director among the employees in the units found appropriate at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the units found appropriate who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date, and who have been permanently replaced.

⁷ In reaching my determination that separate craft units are appropriate, I particularly rely on *Schaus Roofing*, supra. In *Schaus Roofing*, the decision reflects certain employees performed substantial amounts of both pipefitting and sheet metal work. Nonetheless, the Board concluded a separate sheet metal employee unit was appropriate. Similarly here, employees may perform both plumbing and sheet metal work, but this does not negate the "distinct and homogenous" nature of plumbing and pipefitting and sheet metal work.

Also eligible to vote are those employees who have been employed for a total of 30 working days or more within the period of 12 months immediately preceding the eligibility date for the elections, or who have some employment in that period and have been employed 45 working days or more within the 24 months immediately preceding the eligibility date for the elections, and who have not been terminated for cause or quit voluntarily prior to the completion of the last job for which they were employed. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by Sheet Metal Workers International Association, Local No. 7, AFL-CIO, if covered by the unit description in 30-RC-6473, or by U.P. Plumbers and Pipefitters U.A., Local 506, if covered by the unit description in 30-RC-6474.

LISTS OF VOTERS

In order to ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to each election should have access to the list of voters and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 384 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer shall file with the undersigned, **two** copies of an election eligibility list for each unit, containing the **full** names (including first and last names) and addresses of all the eligible voters, and upon receipt, the undersigned shall make the lists available to all parties to the elections. To speed preliminary checking and the voting process itself, it is requested that the names be alphabetized. **In order to be timely filed, such list must be received in the Regional Office, Suite 700, Henry S. Reuss Federal Plaza, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203 on or**

before September 6, 2002. No extension of time to file these lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, Franklin Court, 1099 14th Street, N.W., Washington, DC 20570. **This request must be received by the Board in Washington by September 13, 2002.**

Signed at Milwaukee, Wisconsin on this 30th day of August 2002.

/s/Philip E. Bloedorn

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